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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 WESTERN PROTECTORS
10 INSURANCE COMPANY,

11 Plaintiff,

12 v.

13 RONALD LAVERNNE SHAFFER,
14 IRENE WATERS, and DEBORAH
HAYNES, as Guardian ad Litem to C.H.
and D.H.,

15 Defendants.
16

CASE NO. C08-5316BHS

ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION

17 This matter comes before the Court on Plaintiff's Motion for Reconsideration
18 (Dkt. 28). The Court has considered the pleadings filed in support of the motion and the
19 remainder of the file and hereby denies the motion for the reasons stated herein.

20 **I. PROCEDURAL BACKGROUND**

21 On May 19, 2008, Plaintiff Western Protectors Insurance Company filed a
22 complaint against Defendants Ronald Lavernne Shaffer, Irene Waters, and Deborah
23 Haynes, as Guardian ad Litem to C.H. and D.H. Dkt. 4. Plaintiff requests a declaratory
24 judgment that it has neither a duty to indemnify nor a duty to defend Defendants Mr.
25 Shaffer and Ms. Waters in an underlying state action. *Id.*, ¶¶ 1.3 and 6.2.

26 On October 3, 2008, Plaintiff filed a Motion for Summary Judgment. Dkt. 11. On
27 October 27, 2008, Defendants responded. Dkts. 16 (Ms. Haynes) and 17 (Mr. Shaffer and
28

Ms. Waters). On October 31, 2008, Plaintiff replied. Dkt. 21. On January 9, 2009, the Court issued an order granting in part and denying in part, without prejudice, Plaintiff's motion. Dkt. 26 ("Order"). On January 20, 2008, Plaintiff filed a Motion for Reconsideration of the Order. Dkt. 28.

II. FACTUAL BACKGROUND

The facts are thoroughly explained in the Order. *See* Dkt. 26.

III. DISCUSSION

Motions for reconsideration are governed by Local Rule CR 7(h), which provides as follows:

Motions for reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.

Local Rule CR 7(h)(1). Plaintiff does not state whether the Court committed manifest error or whether it has new facts or legal authority that was not provided to the Court. *See* Dkt. 28. Plaintiff seems to have filed its motion for reconsideration simply because it disagrees with the Court's opinion. Therefore, the Court will assume that Plaintiff contends that the Court committed manifest error in the Order.

As in its motion for summary judgment, Plaintiff cites numerous out-of-state cases for the proposition that its insurance policy does not provide coverage for injuries arising from its insured's sexual acts. *See* Dkt. 28 at 4-12. Those authorities are no more persuasive on reconsideration than they were for purposes of summary judgment. The Court applied current Washington law and appropriately denied coverage for some claims against the insured under the insurance contract. Plaintiff, however, specifically included coverage for claims of "invasion of privacy" against its insured. *See id* at 2. While Washington courts have created an "intent to injure" rule for negligent sexual acts, *Rodriguez v. Williams*, 107 Wn.2d 381, 384 (1986), they have not extended this rule to preclude coverage under policies that specifically provide coverage for claims of

1 “invasion of privacy” against its insured. The Court addressed this issue in the Order as
2 follows:

3 Plaintiff, however, urges the Court to apply the inference of an intent to
4 injure rule pursuant to *Rodriguez, supra*, and its progeny. Dkt. 21 at 7-11.
5 But those cases hold that certain acts which are subjectively unintentional
6 may be inferred to be intentional and therefore fall within the intentional
7 acts exclusion. Plaintiff’s argument is misplaced in that, even if all of Mr.
8 Shaffer’s acts were intentional, it would not resolve the ambiguity that
exists between coverage for the intentional tort of invasion of privacy and
the exclusion for intentional acts. While this rationale seems to mandate a
duty to defend whenever a claim for invasion of privacy appears in a
complaint against the insured, the drafter of the insurance contract bears the
burden of his own language. *National Union Fire Ins. Co. v. Zuver*, 110
Wn.2d 207, 210 (1988).

9 Order at 11-12.

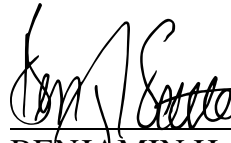
10 Plaintiff has failed to show that the Court’s reasoning constitutes manifest error.
11 Moreover, the Court will neither extend Washington law to preclude coverage based on
12 the facts of this case nor rewrite the insurance contract to explicitly preclude coverage for
13 claims of invasion of privacy that are either intentional or based on sexual acts of the
14 insured.

15 IV. ORDER

16 Therefore, it is hereby

17 **ORDERED** that Plaintiff’s Motion for Reconsideration (Dkt. 28) is **DENIED**.

18 DATED this 23rd day of January, 2009.

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22 BENJAMIN H. SETTLE
23 United States District Judge
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